



STATE OF IOWA

CHESTER J. CULVER, GOVERNOR
PATTY JUDGE, LT. GOVERNOR

DEPARTMENT OF NATURAL RESOURCES
RICHARD A. LEOPOLD, DIRECTOR

Underground Storage Tank Section

Public Hearing Response Summary Notice of Intended Action, ARC 7400B, IAB 12/13/08

Proposed amendments to 567--Chapter 135 IAC:

- Rescinds provisions related to special procedures for assessing public water supply wells.
- Adds a provision that requires the risk from a petroleum release be re-evaluated when the conditions under which a pathway was classified "no action required" no longer exist, or it is determined the site presents an unreasonable risk to a public water supply well, or the model is found to be under predictive.

No written comments on these rule amendments were received from the public. A public hearing was held on January 6, 2009. Six people attended the meeting. Comments were given by Jeff Hove representing the Petroleum Marketers and Convenience Stores of Iowa (PMCI).

General Summary of Comments:

Mr. Hove commented on the preamble to these rules which describe a 28E agreement between the Department of Natural Resources (DNR) and the Iowa Comprehensive Petroleum UST Fund Board (UST Fund) for studying the risk to public water supply wells (PWSW) from petroleum contamination. Mr. Hove expressed his understanding that should the study show a PWSW located outside the modeled contaminant plume is found to be at risk, that the Department would take measures to also prohibit the permitting & construction of any additional PWSWs in the area deemed to be at risk due to the UST petroleum release. He indicated this point was made at stakeholder meetings, but didn't see the matter expressly discussed in this preamble nor in the 28E agreement.

Response: The idea of prohibiting wells from being installed in an area considered to be at risk or likely to become contaminated by petroleum contamination may have been brought up early on in the stakeholder process; however, it was not part of the final negotiations and decision to accept this alternative approach for examining risk to PWSWs. Further, the regulations regarding well permitting (or denial, thereof) are not part of Chapter 135, but rather addressed under Chapter 43.3 (public water supply system construction). Currently, provision 43.3(7) "b"(5) provides that wells may not be permitted in areas of projected plumes (e.g., areas of "any known anthropogenic groundwater contamination").

The DNR agrees it prudent not to create additional risk by permitting wells in vulnerable areas; The UST Section will work closely with DNR's Water Supply Engineering Section and Water Supply Operation Section to ensure protection of water supplies, either by finding alternative locations for wells or implementing appropriate design, construction, and drilling standards. Equally, a community has the right to a safe and sustainable water source. As such, other options for preventing risk to water supplies may also be necessary to preserve that resource (e.g., cleanup or reduction of the sources of contamination). These decisions will be case specific.

Mr. Hove also made comments specific to Item 2, an amendment to subrule 135.8(1).

ITEM 2. Amend subrule 135.8(1) by adopting new paragraph "e" as follows:

e. Pathway re-evaluation. Prior to issuance of a no further action certificate in accordance with 135.12(10) and Iowa Code section 455B.474(1)(h)(3), if it is determined that the conditions for an individual pathway that has been classified as "no action required" no longer exist, or it is determined that the site presents an unreasonable risk to a public water supply well or the model used to obtain the pathway clearance under predicts the actual contaminant plume, the individual pathway shall be further assessed consistent with the risk-based corrective action provisions in 567--135.8(455B) through 567—135.12(455B).

Mr. Hove indicated the entire focus of the stakeholder meetings was to determine how to assess risk to public water supply wells – that other pathways were not under consideration. Further, he understood the Department accepted the new model as adequate to assess risk to other pathways and receptor types. He is concerned that new paragraph “e” opens up the potential for the DNR to require assessment of other pathways under the identified circumstances, regardless of what the model indicates is at risk.

Response: The DNR agrees the focus of the stakeholder meetings was to examine alternative ways for assessing risks to PWSWs located outside the modeled plume in light of use of a new model that has less of a ‘buffer’ zone than the previous model. Paragraph ‘e’ was born out of discussions related to the PWSW risk study and funding of corrective action should a LUST site be creating a risk to a PWSW (and in replacement of the former special well assessment procedures). Specifically, funding mechanisms are in place to cover corrective action at LUST sites when a PWSW is found to be at risk, but only for certain eligible sites and eligible conditions (see PWSW Study 28E, and 28E for funding assessment/corrective action for NFA sites that need to be reopened). There are some sites that will not be covered under either of these 28Es. Paragraph ‘e’ was added to the rule to give the Department authority to require responsible parties to address unreasonable risks to public water supply wells.

Discussions at the stakeholder meetings focused on the limitations of a two-dimensional model, as well as limitations of plume definition based on sampling strategies currently in use. Should the study indicate the model is inadequate, paragraph ‘e’ would be in place to direct necessary corrective actions to protect public safety, health and the environment.

It is not the Department’s intention nor practice to capriciously open other pathways to evaluate risk when the model and site conditions reflect there is not likely a risk. The RBCA process and groundwater transport model are the framework and methodology by which receptors are assessed for risk (per 567--135.8(455B) through 567—135.12(455B)). We intend to continue using this process. However, should conditions change or new risks be identified, the Department has a duty to respond. This is not different from how the rules are applied currently.

We appreciate public participation and acknowledge the comments received. The comments heard at the public hearing held January 6, 2009, have merit; but the Department’s position is they do not warrant a substantive change to the rule language.

Copies of the transcribed public hearing notes are available upon request.

1/23/09

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